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**CONGRESS AND THE LINE ITEM VETO:
FISCAL RESPONSIBILITY OR CONSTITUTIONAL FOLLY?**

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Seminar "M"**

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On March 28, 1996 the United States Congress passed a historic bill giving the president the equivalent of a line item veto authority. The measure was among the most significant new laws produced by the 104th Congress – and among the very few on which the hard line, deficit-cutting Republicans and President Clinton readily agreed. What made the action more surprising was the willingness Congress displayed to relinquish a significant portion of its long cherished and jealously guarded power of the purse. By passing the Line Item Veto Act of 1996, (PL 104-130), Congress granted the nation's chief executive an important budgetary power actively sought by White House occupants since the post-Civil War presidency of Ulysses S. Grant.¹

If the line item veto survives a constitutional challenge now pending before the Supreme Court, most political observers and many members of Congress believe the law significantly expands the power of the presidency while diminishing that of Congress. Critics labeled the unprecedented transfer of power as unnecessary, unconstitutional, and downright dangerous, with the potential to unravel a number of the government's budgetary checks and balances. Proponents said it was a long overdue measure needed to reassert Congress's fiscal integrity, enforce fiscal responsibility, reduce the deficit and eliminate the most blatant examples of "pork barrel" politics. They endeavored to fashion the law's provisions to withstand certain constitutional challenges while providing adequate safeguards to protect Congress's traditional interest and role in the federal budget process.

¹ "Congress Nears Agreement on Line Item Veto," *Los Angeles Times*, 15 March 1996, 1

Either way, passage of the bill flies in the face of conventional wisdom concerning Congress's normal legislative tendencies since conceding such a fundamental legislative power to another branch of government contradicts one of the most staunchly defended principles of Congress's institutional self-esteem. In retrospect, it is worth asking how Congress passed legislation so apparently against its self-interests and why members of Congress voted for legislation that reduced their power and authority while enhancing the president's. Given the many governmental institutions and processes that shape national security policy, investigating the underlying reasons for Congress's passage of the line item veto is both intriguing and enlightening, and best done by examining the interaction of the institutional and legislative dynamics that forged the outcome.

History of the Line Item Veto Effort

Congress did not pass the line item veto at the drop of its legislative hat. While references to presidential desires for a line item veto go as far back as 1876, modern day interest in the initiative was revived by President Reagan's third State of the Union address in January 1984.² Using the publicity of that forum to its best advantage, Reagan tossed down the gauntlet and asked Congress and the nation for a constitutional amendment to give the president a line item veto, essentially the same as he enjoyed while governor of California.

The Republican led Senate attempted to do what Reagan requested, but came up short in several attempts to pass a legislated form of line item veto, falling one vote shy in May 1984 and unable to halt a filibuster in July 1985.

² Mark Kehoe, "History of the Line Item Veto," *Congressional Quarterly*, 30 March 1996, 834

From time to time, Reagan and other Republicans repeated the call for a line item veto, but Congress was content to let the issue lie for seven more years ³

In late September 1992, conservative House Democrats, angered over their leadership's refusal to schedule a floor vote on the line item veto, joined with Republicans to pass an equivalent form of line item veto by attaching an "expedited recissions" measure to a "must-pass" continuing resolution bill. Although it passed easily in the House, Senate Appropriations Committee chairman Senator Robert Byrd (D-WV), a staunch opponent of the line item veto killed it in the Senate. Undeterred by this turn of events, presidential hopeful Bill Clinton, who like Reagan enjoyed the line item veto as a state governor, kept the public's eye on the issue by endorsing it throughout his presidential campaign ⁴

In 1993 and 1994, the House responded to repeated public criticism of continuing budget deficits and questionable spending habits by passing line item veto measures again, only to watch these die at the hands of the Senate too. However, in late September 1994, the measure took on a new urgency and higher visibility when more than 300 GOP House candidates signed the "Contract with America", with its first plank calling for a permanent line item veto authority. Most of these candidates won seats in the subsequent elections, and together with GOP gains in the Senate, Republicans took full control of Congress for the first time in almost 50 years, setting the stage for another run at the prize.

In early 1995, the Senate and the House each passed bills creating a legislative line item veto, but the bills took radically different approaches. The

³ Ibid

⁴ Ibid

House's "expedited recissions" bill, not strictly a true line item veto, allowed the president to cancel individual appropriations after enactment into law, but raised serious constitutional questions. The Senate's more cumbersome proposal required "separate enrollment" for each specific appropriation. This would require Congress to pass, and the president to sign, up to 9,000 individual appropriation bills each year, instead of the thirteen omnibus appropriation bills used today. This avalanche of paper was a major drawback, but each bill could be vetoed individually, thus skirting the constitutional difficulties.⁵

The conference process to resolve the discrepancies between the bills stalled for a full year due to changing political objectives of Senate majority leader (and presidential candidate) Bob Dole and Speaker of the House, Newt Gingrich. After much prodding and poking by senators and representatives alike, both houses passed the conference bill in late March 1996. The final version most closely resembled the House's "enhanced recissions" bill, but still managed to accommodate the Senate's principle concerns, including a compromise engineered by Senator Dole to delay the bill's effective date until January 1997. Thus, with no possibility for any politically motivated use during the 1996 presidential elections, President Clinton signed the bill into law on April 9, 1996.

Line Item Veto - What it is and what it isn't

Prior to the enactment of the line item veto law, presidents could only approve or veto entire spending bills. Using this system to maximum advantage, members of Congress often created strange conglomerations of legislation by

⁵ Ibid

adding unrelated provisions or amendments known as riders. The only way the president could veto these add-on provisions was to strike the entire bill.

Now, under the new law, the president has five days after he signs a spending bill to rescind specific appropriations, narrowly targeted tax breaks or expanded government spending programs. Congress can restore any cancelled items by a simple majority vote on a Bill of Disapproval. If the president still objects, he can veto this bill just like any other and Congress, in turn, can override the veto with a two-thirds majority in each house.

Arguments For and Against

Proponents of the line item veto argued it would be a powerful tool to help balance the budget and eliminate wasteful spending. President Clinton, in his remarks at the bill signing, echoed his earlier requests for the line item veto, and the feelings of many of the bill's supporters, by saying it would allow him "to reduce 'pork-barrel' spending and close tax loopholes."⁶ Many supporters believed that vetoes of individual pork-barrel items would focus unwanted attention on the responsible legislators, and thereby reduce the number of obscure special interest riders by deterring members from proposing them in the first place. In the 43 states where governors have used a line item veto or equivalent authority, supporters say it has been used selectively and responsibly, helping balance state budgets and limit the influence of special interest groups.

Opponents staked the crux of their case on the argument that the bill would unconstitutionally violate the separation of powers and shift excessive

⁶ U.S. President, Office of the Press Secretary, "Remarks by the President at Signing of the Line Item Veto Bill", William Clinton, 9 April 1996

power from the legislative to the executive branch. Some members envisioned the president using the veto to manipulate legislators, rewarding or punishing through approval or disapproval of spending measures according to their support of measures favored by the president. They also claimed the effects of the bill's tax break provisions and line item spending cuts would only impact a tiny fraction of the overall federal budget, with a negligible effect on reducing the deficit.

Debating the Bill

The economic case for giving the president line item veto authority rested on two facts: the federal government historically spent too much and the legislative process was biased in favor of spending increases.⁷ For twenty-five consecutive years Congress had been unsuccessful in reversing the growth of federal spending or passing a balanced budget.

As debate focused attention on the details of the veto initiative, more than twenty different proposals and variations on the theme were introduced. The best of these modifications, combined with in-depth discussions and greater understanding of the veto's mechanics, were sufficient to persuade several reluctant members to change their minds as the bill took its final form. The more important rationales included

- The line item veto authority would only be temporary, expiring 1 January 2005 under a "sunset" clause unless Congress reauthorized or extended it. Reluctant supporters could live with an eight-year trial period to see if the experiment would work or not.

⁷ Congress, House, "The Line Item Veto and the American Economy", Joint Economic Committee Press Release, 2 February 1995

- A legislated line item veto would not be as powerful as one based on a constitutional amendment. Congress could alter, suspend or abolish it just like they created it - by legislative action. Furthermore, line item appropriations could be specifically exempted from the veto merely by inserting appropriate language in each bill they wanted to protect.⁸
- There was tremendous pressure on the Republicans in both houses to unify behind this issue. The Senate was still smarting from the earlier defeat of the Balanced Budget Amendment - by 1 vote - and risked becoming a graveyard for the Contract with America planks passed by the House. Majority Leader Trent Lott was pushing hard to keep conservative Republicans on board and avoid a second embarrassing defeat of a popular Republican initiative.
- In the House, Speaker Newt Gingrich required all the Republicans on the House Appropriations Committee to sign a loyalty oath to the Contract with America. Committee Chairman Bob Livingston (R-LA), despite deep misgivings over the issue, kept his oath, moved the bill through committee and voted for it on the floor.⁹
- A provision to prevent uncontrolled use of the veto required that any savings realized be applied to the deficit. This would prohibit diversion of funds into other programs against Congress's wishes and limit the veto's use only to deficit reduction, i.e. no deficit, no veto.¹⁰

⁸ Robert Reischauer, "Line Item Veto: Little Beef and Mostly Bun", *Washington Post*, 10 April 1996

⁹ Jeff Shear, "Power Loss", *National Journal*, 20 April 1996, 875

¹⁰ "House and Senate Reopen Talks On Line Item Veto", *Baltimore Sun*, 9 November 1996, 2A

As the debate ebbed and flowed in the Senate, each side portrayed their vision of the likely outcomes. Senators Sam Nunn (D-GA) and Robert Byrd (D-WV) thought the bill would transfer too much power to the president and would invite executive branch abuses. Nunn also argued that since many individual projects are lumped into larger programs, Congress would be more likely "to drive pork into underground shelters, where it will be hidden from scrutiny."¹¹

In a curious turn of events, Senator Howell Heflin, (D-AL), a strong supporter of the line item veto, ended up voting against the final conference report version because he felt it violated constitutional standards. He argued unsuccessfully to convince his colleagues that "recissions" by the president would, in effect, repeal existing law, which is a legislative power reserved exclusively to the Congress by Article I of the Constitution.¹²

Democratic Minority Leader Senator Tom Daschle of South Dakota voted in favor of the bill "very, very reluctantly" despite his long-standing support for a line item veto. He carefully listed and explained his reservations about the bill's provisions in a speech on the Senate floor. He then noted for the record that he voted for the bill only after he was satisfied that a wide range of concerns had been adequately addressed through compromise, debate and a more complete understanding of the bill's provisions.¹³

¹¹ "Line Item Veto Advances in Senate Despite Worries", (*Phoenix*) *Arizona Republic*, 24 March 1995, A6

¹² Congress, Senate, Senator Heflin of Alabama speaking against the constitutionality of the Line Item Veto conference report, 104th Cong , 2nd Sess , *Congressional Record*, 142, No. 45, 28 March 1996, 315C

¹³ Congress, Senate, Senator Daschle of South Dakota expressing further thoughts on the line item veto, 104th Cong , 1st Sess , *Congressional Record*, 141, No. 54, 23 March 1995

Final Passage

The passage of the line item veto initiative was never certain, right up until the end. After struggling for a year to hammer out an acceptable conference report, GOP tacticians had to keep pressure on for the final push. Amidst partisan allegations of Republican delays to keep the new veto authority away from a Democratic president¹⁴ and the distractions of a critically important debate on raising the ceiling of the national debt, the Republican leadership carefully planned the timing and path of the final steps of the process.

The pressing need to keep the government solvent by passing a bill to increase the debt limit presented an opportunity to attach the line item veto bill and complete action on both bills. This possibility mobilized the Senate and House conference bill negotiators to finish their work. Pressured by Senator Dole, they struck a deal on the bill's final language and strategy of handling of the conference report in both houses. The House attached the line item veto provisions to the debt limit bill, voted on the combined package, and then detached the veto from the debt bill before sending it to the Senate. This maneuver allowed the Senate to consider the line item veto conference report as a stand-alone measure, which was important since conference reports are not amendable under Senate rules. It also gave necessary cover to House conservatives who could say they were voting to help balance the budget and to keep the government fiscally afloat.¹⁵

¹⁴ Congress, Senate, Senator Dorgan of North Dakota speaking on why he voted for the Line Item Veto Bill, 104th Cong., 2nd Sess., *Congressional Record*, 142, No. 55, 25 April 1996, 4250.

¹⁵ George Hagen, "GOP Makes Peace on Debt Limit", *Congressional Quarterly*, 23 March 1996, 782.

The final 69-31 vote came only after the bill's chief opponent, Senator Byrd, conceded he didn't have the votes to stop it and indicated he would not filibuster, although he expressed the fervent hope the law would be struck down in the courts ¹⁶ Since the Senate had approved without exception, the House was deemed to have approved also and the bill presented to the president without further action by the House. The rest as they say is history.

Conclusion

The lesson learned from this exercise is that although Congress acts as a body, it is comprised of 535 independently minded individuals. The wide variety of constituent, political party, colleague, institutional, state and national interests influencing their actions at any one time creates a dynamic system where just about anything is possible and nothing is completely predictable. The key to getting anything done in Congress is consensus and consensus is achieved only by accommodating the inputs and opinions of all members, who try to maintain a balanced representation of all their interests as best they can. The struggle to pass the line item veto took more than 12 years and required considerable legislative wizardry from former Majority Leader Bob Dole and Speaker Newt Gingrich to maneuver the bills over, around and through the objections of reluctant Republicans and opposing Democrats. Despite all this, the "final" result is not final. The Supreme Court has not yet ruled on the law's constitutionality and Congress may have to take up the whole issue once again in 2004.

¹⁶ "Senate OK's Line Item Veto", *Detroit News*, 28 March 1996, 3A

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